

HCBS Final Rule Workgroup meeting minutes

HCBS Final Rule Workgroup Meeting		
8.12.2015	10:00am- 3:00pm	St. Francis Hospital, Meeting Room 1
Meeting called	Kansas Department for Aging and Disability Services (KDADS)	
Type of meeting	Workgroup	
Facilitator	Wichita State University- Kevin Bomhoff	
Note taker	Ashley Kurtz	
Attendees	Kimberly Pierson, Ashley Kurtz, Laura Leistra, John Barry, Greg Wintle, Brandt Haehn, Pam McDuffett, Ryan Gonzalez, Sandra Andrews, Helen Cherry, Cori Huxman, Ramona Macek, Jody Patterson, Anthony Fadale, Chris Gafford, Rachel Monger, Linda Mowbray, Robert Cooper, Mike Horan, Kevin Bomhoff	

Welcome		
15 minutes	Kevin Bomhoff	
Discussion	<p>Fifteen minutes were allotted for workgroup members to re-introduce themselves to the other participants in the group. Each participant stated their name, organization, and Subgroup assignment. The meeting minutes from the June 29th meeting were finalized as there were no comments or revisions submitted by the Workgroup. Anthony Fadale discussed a “concern” regarding the St. Francis meeting room as an example for Workgroup consideration. Anthony states that even though the meeting room has a doorway that is large enough to accommodate a wheelchair, the facility has placed trashcans that are blocking the entrance. The meeting room meets the ADA requirements but the facility’s placement of the trashcan would make the room inaccessible for an individual in the wheelchair. The workgroup agreed that the assessors of the HCBS Final Rule should be aware of obstacles or objects that may be a barrier regardless of the size of the room or doorway.</p>	
Action Items	Person	Deadline
Final “qualified” recommendations	Workgroup	August 21, 2015

Subgroup #1 Call-Out

20 minutes	Jody Patterson/Linda Mowbray
Discussion	

Jody Patterson provided an update on the progress of Subgroup #1 (focusing on the changes that might be needed for the setting to come into compliance with the HCBS Final Rule). Jody reported that the Subgroup submitted a list of proposed changes to the State yesterday that focused on approximately 10 areas that setting might have concerns with compliance. These areas included: legally enforceable leases, choice of food, choice of eating arrangements, choice of roommate/bedroom, employed/active in the community, choice of activities, and visitation.

The Subgroup discussed how some of the current HCBS living arrangements could be compared to the expectations of someone without a disability living in a congregate setting. For example, the Subgroup presented the idea of an individual living in a dorm room. The facilitator/co-facilitator states that there are rules and expectations for an individual that is living in a dorm room. There are expectations on when food is available in the cafeteria, when visitors are permitted, etc. If the individual does not agree with the rules/expectations, then the person has the right to choose to live somewhere else that does not have the restrictions. In addition, there are rules in a home (i.e., eat the family meal or make your own sandwich).

Is this a premise that CMS will accept?

An individual without a disability also have expectations or rules when living in a rental apartment. For example, some rental apartments do not permit animals or may permit well-behaved pets. If the individual has an animal that defecates in the hall of the apartment complex, then the individual may be asked to leave the rental apartment. Therefore, would the HCBS providers not get the same option to have rules or expectations for their settings and have the right to ask a person to leave if the rules/expectations are not met.

How does we expect providers to meet the expectations for the HCBS Final Rule? What is the actions of one of the residents is violating the rights of another participant?

The providers/settings must have an overall acknowledgment that meet an individual's rights and needs without obstructing or infringing on the rights of the other participants.

The provider is responsible for ensuring that the participant understand his/her rights and responsibilities?

Subgroup #3 Call-Out

20 minutes

Cori Huxman

Discussion

Cori Huxman provided an update on the progress of Subgroup # 3 (focusing on the onsite assessment process). The Subgroup reiterated that the assessors of the HCBS Final Rule must be **conflict free** before they will be considered for the assessment process. The assessor must not have the power to benefit or gain from the settings assessment results. For example, a competing IDD residential setting would potentially gain/benefit if another setting was determined non-compliant with the HCBS Final Setting Rule.

The Subgroup has concerns about the liability part if volunteers are part of the assessment process. Who is responsible if there are concerns at the setting that have been reported and are waiting for investigation but something happens to the individual at the setting? Will the assessor be liable for similar situation?

The Subgroup also mentioned that the assessor must be able to pass all background checks and have a driver's license. The Subgroup reported that it is likely that many of the assessment applicants will already have the background; however, the group was uncertain how the process would work if the potential assessor did not have a background check. Who would be responsible for covering the cost of the background checks? Another member of the Workgroup expressed concerns about the requirement for driver's license as some individuals might not have a license but have access to other methods of transportation. Cori clarified that the requirement will be that the individuals must have access to reliable transportation, not necessarily a driver's license.

The Subgroup felt that the assessors should get an intensive training included objectives such as HIPPA, PHI, Ethics, Rights and Responsibilities. Another member of the Workgroup inquired about the possibility of the ADA training for the applicants. The Subgroup also felt that the assessors should be knowledgeable about general HCBS language (across waivers), interview skill training, and behavior adaptability training (best protection for themselves and the consumer).

Other members of the group expressed feedback regarding the qualifications of the assessor. Another member of the Workgroup indicated that the assessors should be management level (excluding the option of having social work students). The member indicated that management experience would be preferable since the assessment process will require some level of judgment and should be completed by a professional. The Workgroup members also agreed that the assessor needs some form of certification and training. The State clarified that the final determination of compliance will be a State decision regardless of the individual/party that actually completes the onsite assessment.

Another member of the workgroup suggested the options of exit interviews with the provider to discuss the concerns. This concept was discussed as a group as a potential benefit and potential conflict. One of the concerns was that the provider might be upset to be told the problem areas by an assessor (other than the State). Another concern was that the assessor will not be making the compliance determination and the "exit interview" might imply that the determination has been made by the assessor.

Questions for the State:

What would be the assessor's authority?

Is there a scheduled time for the onsite assessment? How is the meeting scheduled (monthly in advance, surprise, etc.)? Can the provider refuse to participate in the onsite assessment?

What is the impact on the rights of the consumer? What does the assessor do if the consumer refuses to participate?

What is the provider "no-shows" at the scheduled appointment?

How does the assessor expedite any potential concerns? What is the expedite process?

Other considerations for the Workgroup to consider prior to the final recommendation:

- How will the assessor address a situation if a consumer has a need for accommodations? How will this be determined (will they know ahead of time or have to schedule a return visit)? How will the cost of the accommodations (i.e., interpreters)?
- Does the legal guardian need to give permission to interview the consumer? How will the assessor get legal guardian consent?
- What will be the process for ensuring that consumer feedback is obtained and all authority is not given to the guardian? What if the guardian made an inappropriate decision?

The Workgroup agreed that the guardian has a dual role and that the concept needs to be explored further.

Subgroup #2 Call-Out

20 minutes	Rachel Monger
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Discussion	
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Rachel Monger provided an update on the progress of Subgroup #2 and #4 (focusing on the design elements for the assessment tool and the process for submitting evidence of compliance). Rachel reported that the manual for the draft assessment tool has been created and additional comments on the assessment tool/manual were gathered from different members of the Subgroup. The Subgroup felt that concerns with staff can have a big impact in the regulations related to HCBS Final Rule (specifically related to availability of staff and choice of activities). The Subgroup also commented that availability of resources can have an impact on the HCBS Final Rule. For example, what if a consumer wants to go to the movie every night or go to church every night? Who would pay for a situation like that? The HCBS setting should try to accommodate as much as possible and explore community resources to help (i.e., getting church members to come and pick up the participant, etc.).

Rachel also discussed the idea of having an NA column and how difficult the column can make the assessment tool/process. This was further discussed during the Workgroup review of the assessment tool. (see later notes) The other concept that was presented to the Workgroup was the different between the waivers and how that will be addressed in the assessment tool. For example, IDD participants have a choice form (for choice of providers) but FE participants do not have a form but the process is still completed. How will the assessment tool explore all the differences between the different waivers?

Workgroup Review of Draft Assessment Tool

2 hours	Workgroup
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Discussion	
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The Workgroup members met to review the original draft assessment tool to help members of the Subgroups (other than groups 2 & 4) get familiar with the assessment tool. After approximately 45 minutes, the Workgroup was tasked with providing comments and feedback on the reviewed draft assessment tool. Some of the reviewed adaptations included a general format change and additional information at the top of the assessment tool. The Workgroup was also tasked with providing additional information on highlighted areas of the original draft tool that were unclear.

Workgroup Recognition

15 minutes	KDADS
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KDADS took a moment to recognize and applaud the Workgroup members for their dedication with the project. The Workgroup was tasked with completing several tasks/objectives on an aggressive timeline and KDADS wants to acknowledge the hard work of the group.

NOTE: Attached are copies of the materials developed and reviewed by the Workgroup. As a reminder, all information provided to this Workgroup should remain within the group at this time. The State will post draft versions of the materials online for public comments once the comments and recommendations of the Workgroup have been reviewed.